

REMARKS

Applicants hereby elect without traverse the claims of Group 1, i.e., claims 1-18, and elect growth hormone as the polypeptide for examination in this application. Applicants have cancelled claims 19-42 without prejudice and expressly reserve the right to pursue the non-elected claims in one or more divisional applications.

The Examiner has also required Applicants to elect one species of the amino acid sequences set forth in SEQ ID NO: 12, 13 or 14. Applicants hereby elect SEQ ID NO: 12. In addition, the Examiner has required Applicants to select one modification from the list of modifications set forth in claims 13-18 for consideration and states that the election is not a species election but rather is a restriction.

Applicants hereby elect glycine 120 to arginine with traverse and respectfully request that glycine 120 to arginine be considered a species of the amino acids recited in claim 17, i.e., the Markush group consisting of arginine, alanine, lysine, tryptophan, tyrosine, phenylalanine and glutamic acid.

This application is a national stage entry under 35 U.S.C. 371, of PCT/GB04/01572 and thus the Examiner must review the claims for lack of unity under PCT Rule 13.1 and 13.2. The MPEP § 1850(B), illustrates the three typical situations where unity of invention should be analyzed. One of the three situations is "Markush Practice."

The situation involving the so-called Markush practice wherein a single claim defines alternatives (chemical or non-chemical) is also governed by PCT Rule 13.2. In this special situation, the requirement of a technical interrelationship and the same or corresponding special technical features as defined in PCT Rule 13.2, shall be considered to be met when the alternatives are of a similar nature.

When the Markush grouping is for alternatives of chemical compounds, they shall be regarded as being of a similar nature where the following criteria are fulfilled:

(A) All alternatives have a common property or activity; and

(B) (1) A common structure is present, i.e., a significant structural element is shared by all of the alternatives; or

(B) (2) In cases where the common structure cannot be the unifying criteria, all alternatives belong to a recognized class of chemical compounds in the art to which the invention pertains.

In paragraph (B)(1), above, the words "significant structural element is shared by all of the alternatives" refer to cases where the compounds share a common chemical structure which occupies a large portion of their structures, or in case the compounds have in common only a small portion of their structures, the commonly shared structure constitutes a structurally distinctive portion in view of existing prior art, and the common structure is essential to the common property or activity. The structural element may be a single component or a combination of individual components linked together, and

In paragraph (B)(2), above, the words "recognized class of chemical compounds" mean that there is an expectation from the knowledge in the art that members of the class will behave in the same way in the context of the claimed invention. In other words, each member could be substituted one for the other, with the expectation that the same intended result would be achieved.

Applicants have disclosed (see paragraph [0042]) that substituting glycine 120 in growth hormone with either arginine, lysine, tryptophan, tyrosine, phenylalanine, or glutamic acid creates a growth hormone molecule with antagonistic properties. Thus this Markush group recites substitutions that are all at the same residue in the molecule and share a common property in that they are all antagonists. As such, Applicants respectfully request that the Examiner reconsider the restriction requirement at it pertains to the

modification of growth hormone glycine 120 and examine the species of glycine 120 substituted by an amino acid selected from the group consisting of arginine, alanine, lysine, tryptophan, tyrosine, phenylalanine and glutamic acid.

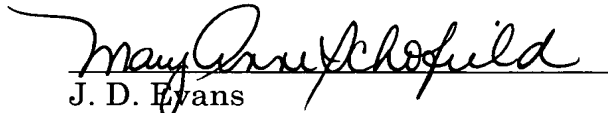
The elected species read on claims 1-3, 6-12, and 16-18. Applicants have withdrawn claims 4-5 and 13-15 as being drawn to a non-elected species/invention.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #100042.59316US).

Respectfully submitted,

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J. D. Evans
Registration No. 26,269

Mary Anne Schofield
Registration No. 36,669

CROWELL & MORING LLP
Intellectual Property Group
P.O. Box 14300
Washington, DC 20044-4300
Telephone No.: (202) 624-2500
Facsimile No.: (202) 628-8844
JDE:mas
dn#4199590